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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,031	08/18/2004	Steven F. Paustell	10645/001	9428

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,031

Applicant(s)

PAUSTELL, STEVEN F.

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Specification

1. The specification in paragraphs [0001], [0003] and [0004] recites “a brush head member release button is depressed to release the brush head member to allow it to be pivoted from the extended position back into the storage configuration when desired”, however, it is unclear what exactly the “brush head release button” is or where it is. Such element should clearly be referred to by reference numeral in the specification beginning at paragraph [0017] and with respect to the drawing figures for a clear understanding of the invention. Also, consistent terminology should be used throughout the disclosure.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, the claim recites numerous recitations “**kinetic energy store**” (lines 3, 6 and 7) which has not been explicitly recited in the specification rendering the scope of the claim vague and unclear. The claim further recites the recitation “**to control the**

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distribution of kinetic energy..." (lines 6-7) which also has not been described or in the specification rendering confusion. It is unclear what element the **"kinetic energy store"** is referring to.

Similarly as above, the phrase **"releasing mechanism"** (line 5) has not been used in the specification in order to clearly enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is also unclear what element the **"releasing mechanism"** is referring to.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nian '107.

As well as claim 1 is understood, the patent to Nian '107 discloses a toothbrush assembly in Figs. 2-5 comprising, a handle structure 6 having first and second opposite ends and a brush storage opening or cavity 64 (Fig. 2; col. 4, lines 35-38), a brush head member 7 pivotally (by pin member 78; col. 3, lines 61-65) attached to said first opposite end, a "kinetic energy store" merely defined by torsional spring 77 operatively attached to said handle structure 6 and to said brush head member 7, and a "releasing mechanism" defined by slider 68 operatively attached to said handle structure (Figs. 2

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and 5) and to said "kinetic energy store" 77 (Fig. 5) operatively configured to control the distribution of kinetic energy from said "kinetic energy store" 77 to said brush head member 7 and said handle structure 6.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

The patents to Schwarz, Lloyd, Ingle, Smith, Carlson, Roth, Rushing, Jr., Mayne, and Kessler are pertinent to various folding or pivoting toothbrush configurations.

7. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, John Kim, can be reached at (571) 272-1142. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin
Primary Examiner
Art Unit 1744